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24 **UNITED STATES DISTRICT COURT**
25 **NORTHERN DISTRICT OF CALIFORNIA**

26 **TIMOTHY FARLEY, AND**
27 **ALEXANDER MONTGOMERY**
28 individually and on behalf of all others
similarly situated,

PLAINTIFFS,

v.

NVIDIA CORPORATION

DEFENDANT.

CIVIL ACTION NO.

CLASS ACTION COMPLAINT

1. **Violation of California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*)**
2. **Violation of California False Advertising Law (Cal. Bus. & Prof. Code § 17500, *et seq.*)**

JURY DEMAND

Plaintiffs, Timothy Farley and Alexander Montgomery (collectively "Plaintiffs"), by and through their undersigned counsel, on behalf of themselves and all other persons and

1 entities similarly situated, allege against Defendant NVIDIA Corporation (“NVIDIA” or
2 “Defendant”) the following facts and claims, upon personal knowledge as to matter relating
3 to himself and upon information and belief as to all other matters, which all other allegations
4 are likely to have evidentiary support after reasonable opportunity for further investigation
5 and discovery and, by way of this Class Action Complaint, aver as follows:

6 **NATURE OF THE ACTION**

7 1. This is a nationwide class action on behalf of all consumers who purchased
8 graphics and video cards incorporating the NVIDIA GeForce GTX 970 graphics processing
9 units (“GTX 970”). The GTX 970 was sold to consumers based on false and misleading
10 representations that it operates with a 4 gigabyte (“GB”) pool of video random access
11 memory (“VRAM”), 64 Raster Operations Pipelines (“ROP”), and 2048 kilobytes (“KB”) of L2 cache capacity.

12
13 2. In actuality, (i) the VRAM in the GTX 970 is divided into two separate pools
14 of memory, with one high performance pool of 3.5GB VRAM, and a second nearly
15 unusable pool of 0.5GB VRAM; (ii) the GTX 970 contains only 56 ROP; and (iii) the GTX
16 970 only has 1792KB of L2 cache capacity.

17 3. NVIDIA deceived consumers by misrepresenting the specifications,
18 characteristics, qualities, and capabilities of the GTX 970 through advertising and
19 marketing. Plaintiffs and consumers were aware of and relied upon these representations at
20 the time of purchase and NVIDIA’s misrepresentations instilled a perception in consumers
21 that the product would, in fact, conform to the advertised and marketed specifications,
22 characteristics, qualities, and capabilities. Deceived consumers have mobilized en masse
23 over their purchase of the GTX 970, which does not conform to the specifications and
24 capabilities advertised by NVIDIA. As of the filing of this Complaint, a petition seeking
25 refunds for the GTX 970 has garnered over 10,000 signatures.¹

26 4. NVIDIA was aware that it was advertising and disseminating false
27 information about the GTX 970’s specifications, characteristics, qualities, and capabilities.

28

¹ <https://www.change.org/p/nvidia-refund-for-gtx-970>

1 NVIDIA intentionally withheld the actual specifications and capabilities from consumers,
2 which were only discovered after consumers noticed performance issues with the GTX 970.
3 After consumers discovered that the GTX 970 does not contain the specifications that
4 NVIDIA said it had, NVIDIA's Senior VP of GPU Engineering, Jonah Alben, disclosed that
5 the GTX 970 does not possess the advertised and marketed specifications, characteristics,
6 qualities, and capabilities.² Less than a month later, NVIDIA's CEO acknowledged that the
7 specifications disseminated to the public differ from the GTX 970's actual specifications.
8 Plaintiffs and the Class purchased the GTX 970 at a premium price based upon NVIDIA's
9 misleading statements as to the GTX 970's specifications, characteristics, qualities, and
10 capabilities. As a result, Plaintiffs and the putative Class and sub-class suffered injuries.

11 **JURISDICTION AND VENUE**

12 5. This Court has jurisdiction over the subject matter of this action pursuant to
13 28 U.S.C. § 1332(d)(2) and the Class Action Fairness Act, in that (i) there is diversity
14 (members of the National Class are citizens of a State different from Defendant), (ii) the
15 amount in controversy exceeds \$5,000,000 exclusive of interests and costs, and (iii) there
16 are 100 or more members in the proposed National Class and in the proposed California
17 Sub-Class.

18 6. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
19 NVIDIA is subject to personal jurisdiction due to the fact that it transacts business in this
20 Judicial District and resides here for venue purposes. Also, a substantial part of the events or
21 omissions giving rise to Plaintiffs' claims occurred in this Judicial District.

22 **PARTIES**

23 7. Plaintiff Timothy Farley is a citizen of California and resides at 3648
24 Whitehaven Avenue, Ceres, California, 95307. On September 19, 2014, Plaintiff Farley
25 purchased two GIGABYTE GV-N970G1 Gaming-4GD GeForce GTX 970 4GB graphics
26 cards at a cost of \$739.98 (\$369.99 each).

27
28 ² <http://www.pcper.com/reviews/graphics-cards/nvidia-discloses-full-memory-structure-and-limitations-gtx-970>

8. Plaintiff Alexander Montgomery is a citizen of California and resides at 1517 Sir Francis Drake Boulevard, San Anselmo, California, 94960. On December 2, 2014, Plaintiff Montgomery purchased a MSI GTX 970 Gaming 4G graphics card at a cost of \$349.99.

9. NVIDIA Corporation is a Delaware corporation with a principal place of business in Santa Clara, California. NVIDIA is a visual computing company and is engaged in the business of designing, manufacturing, selling, and distributing computing equipment, including the GTX 970. The company's products are used in gaming, design and visualization, high performance computing, data center, and automotive and smart device markets. NVIDIA sells its products, including the GTX 970 to equipment manufacturers, original design manufacturers, system builders, motherboard manufacturers, and add-in board manufacturers across the United States, including California.

FACTS

10. NVIDIA developed, designed, manufactured, marketed, and sold the GTX 970 to consumers across the United States. The GTX 970 was made widely available to consumers in September 2014, at costs that range between \$330 to \$500. Upon information and belief, NVIDIA has sold the GTX 970 to tens of thousands of consumers nationwide including thousands of consumers in the state of California.

11. Since that time, NVIDIA has sold and continues to sell the GTX 970 under a marketing scheme that disseminates information about the GTX 970, which is misleading because the characteristics, qualities, and capabilities of the GTX 970 do not conform to NVIDIA's representations. Through direct sales channels and retailers, NVIDIA makes material representations to market GTX 970 devices including (See Figure 1):

- a. Standard Memory Config." is "4GB."³
- b. "Memory Interface" is "GDDR5."⁴
- c. "ROP" of "64".⁵

³ <http://www.geforce.com/hardware/desktop-gpus/geforce-gtx-970/specifications>

⁴ *Id.*

⁵ <http://www.anandtech.com/show/8935/geforce-gtx-970-correcting-the-specs-exploring-memory-allocation>

- d. “L2 Cache” of “2MB”.⁶
- e. The product packaging for the GIGABYTE GV-N970G1 Gaming-4GD GeForce GTX 970 4GB represents that the product is a “4GB GDDR5” device. See Exhibit A attached hereto incorporated here by reference.
- f. The product packaging for the MSI GTX 970 Gaming 4G graphics card represents that the product is a “4GB GDDR5” device. See Exhibit B attached hereto incorporated here by reference.

GEFORCE GTX 970 SPECIFICATIONS *(based on base clock)*

Graphics Processing Clusters	4
Streaming Multiprocessors	13
CUDA Cores	1664
Texture Units	104
ROP Units	64
Base Clock	1050 MHz
Boost Clock	1178 MHz
Memory Clock (Data rate)	7000 MHz
L2 Cache Size	2048K
Total Video Memory	4096MB GDDR5
Memory Interface	256-bit
Total Memory Bandwidth	224 GB/s

GTX 970 Reviewer's Guide: Specifications

*(Figure 1)*⁷

12. Despite the representations proffered by NVIDIA, the GTX 970 does not actually conform nor perform to these specifications during actual use.

13. NVIDIA withheld the true specifications of the GTX 970 from consumers, including Plaintiff, despite having access, actual knowledge, and exclusive possession of information that contradicted the marketed and represented specifications. In tandem with its affirmative statements to the contrary, NVIDIA’s material omission that the GTX 970 does not actually perform as represented, would be likely to, and did, mislead reasonable consumers, specifically those within NVIDIA’s target market for this product.

⁶ *Id.*

⁷ *Id.*

14. In the PC gaming world, whether for entertainment or educational purposes, consumers of high end graphics processing units (“GPUs”) like the GTX 970 make purchasing decisions based on a product’s hardware specifications for which consumers rely heavily on a manufacturer’s own marketing, advertisements, and sales presentations, as well on product reviews produced by professional product reviewers (“PPR”).⁸ NVIDIA knows that its customers rely on information published by PPRs, so it sends new or soon to be released products, along with a “Reviewer’s Guide” to PPRs, free of charge, with the understanding that a PPR will review the product, often in video form, and post a copy of the review online for the PPR’s subscribers (and the public) to view. NVIDIA knows that its customers rely on the articles and product reviews published by PPRs and the press. Even on its own website, NVIDIA provides links to product review pages published and maintained by PPRs.⁹ The “Reviewer’s Guide” NVIDIA sends to PPRs contains product information including *inter alia*, features, specifications, and installation tips.¹⁰ Because NVIDIA’s claims were included in advertisements, marketing, and sales presentations, including a “Reviewer’s Guide”, reasonable consumers of the GTX 970 would likely be misled into believing the GTX 970 functioned using a full pool of 4GB VRAM, 64 ROP, and 2048 KB of L2 cache, when in fact it did not. And NVIDIA’s misrepresentations and omissions alleged herein are of the type that would be material to a significant number of purchasers of the GTX 970.

15. NVIDIA also advertises and promotes the publications by PPRs on its own website in order to bolster sales of the GTX 970.¹¹

16. Due to NVIDIA’s deceptive marketing scheme, Plaintiffs and Class Members were exposed to its misleading representations and purchased GPUs containing the GTX 970 under the false belief that it would function in accordance with their

⁸ See e.g., LinusTechTips. "ASUS Strix GeForce GTX 970 Video Card." *YouTube*. N.p., 22 Sept. 2014. Web. 26 Feb. 2015. <https://www.youtube.com/watch?v=Eqz4tDM6W18> (over 480,000 views); *see also* JayzTwoCents. "Gigabyte GTX970 G1 Gaming Super Overclock Windforce Edition." *YouTube*. N.p., 19 Sept. 2014. Web. 26 Feb. 2015. (over 280,000 views).

⁹ <http://www.geforce.com/hardware/desktop-gpus/geforce-gtx-970/reviews>

¹⁰ See Figure 1.

¹¹ <http://www.geforce.com/hardware/desktop-gpus/geforce-gtx-970/reviews>

1 reasonable expectations, which they held based upon NVIDIA's marketing (including that
2 published by PPRs). Accordingly, NVIDIA's misleading claims were a substantial factor in
3 Plaintiffs' and Class Members' decisions to purchase the GTX 970.

4 17. On two separate occasions, NVIDIA has admitted that the GTX 970 doesn't
5 conform to NVIDIA's own marketing or the reasonable expectations of a typical purchaser
6 of the product.

7 18. On January 25, 2015, NVIDIA's Senior VP of Hardware Engineering, Jonah
8 Alben, disclosed that although the GTX 970 technically contains 4GB of VRAM, only
9 3.5GB perform as advertised, while the final 0.5GB of operates at a much slower rate. As a
10 consequence of this misrepresentation, when the GTX 970 needs to access the final .5GB of
11 VRAM, the application being run slows down dramatically and in effect becomes unusable.
12 Alben admitted that NVIDIA "screwed up" the representations of the GTX 970's
13 specifications within the Reviewer's Guide.

14 19. Alben also admitted that the GTX 970 only contains 56 ROP and not the
15 advertised 64 ROP. Similarly, he admitted the L2 cache was only 1792 KB, 12.5% less than
16 the advertised 2048 KB.

17 20. On February 24, 2015, NVIDIA's CEO, Jen-Hsun Huang confirmed Alben's
18 statements in a press release of his own, where he, in effect confirmed the facts alleged in
19 this Complaint.¹² Specifically, that even though the GTX 970 is advertised as "a 4GB
20 card[,]" the "upper 512MB ... is segmented and has reduced bandwidth." He further
21 admitted that "[NVIDIA] failed to communicate this internally to our marketing team, and
22 externally to reviewers at launch."

23 21. Even in light of these admissions, NVIDIA continues to market and sell the
24 GTX 970 using the same deceptive and misleading statements it has published all along.

25 22. When a computer operation, in most instances a computer game, demands
26 access to VRAM beyond 3.5GB, the GTX 970 will utilize the slower 0.5GB of the total
27 4GB of VRAM. While rate of access to the initial 3.5GB of VRAM is 224GB/s, the rate of
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¹² <http://blogs.nvidia.com/blog/2015/02/24/gtx-970/>

1 access to the 0.5GB portion of the VRAM is a mere 24GB/s. The slower rate of access into
 2 the final 0.5GB is averaged across the GTX 970's overall performance speed, resulting in a
 3 speed reduction. As a result, Plaintiff and Class members experience a drastic reduction in
 4 Frames Per Second ("FPS") rendered in the application or game that they are utilizing. To
 5 the many owners of the GTX 970, this is much more than a de minimus speed reduction.
 6 From a practical standpoint, this slow down causes the visuals of a computer application to,
 7 stutter, chop, and distort, in effect making the application or game unusable when accessing
 8 VRAM beyond the initial 3.5GB.

9 23. NVIDIA also claims that the GTX 970 is designed and capable of performing
 10 in 4K (a High Definition Standard above that of 1920x1080, also known as 1080p HD),
 11 when in fact it cannot. And even if the GTX 970 can technically reach a threshold to be
 12 classified as 4K, it is incapable of performing at a level that would meet the expectations of
 13 a reasonable consumer of this type of product, in part, due to the chip architecture and
 14 herein described sputtering, chopping, and distorting. NVIDIA boasts:

15 To date, only GeForce GTX graphics cards are capable of smoothly
 16 rendering action at 4K in multi-GPU configurations, a fact pattern
 17 proven by the FCAT Frame Capture Analysis Tool, which has been
 18 adopted by leading press sites keen to show their readers exactly how
 a GPU performs, and whether the rendered action is smooth and
 stutter free.¹³

19 4K revolutionizes the way you view your games by adding four times
 20 as many pixels as commonly used in 1920x1080 screens, opening
 21 your eyes to rich, superbly-detailed worlds. If you have a high-end
 GeForce GTX PC, you're ready for the revolution. Just plug and play
 and you'll immediately receive a flawless, jaw-dropping experience.¹⁴

22
 23 24. That the GTX 970 cannot perform as advertised affects the reasonable
 24 expectations of the typical purchaser, including Plaintiffs and Class Members because it is
 25 not a "future proof" card as expected. Due to the fragmented nature of the GTX 970's chip
 26 architecture and its resulting non-conforming performance when compared to other GPUs

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 28 ¹³ <http://www.geforce.com/hardware/technology/4k/technology>

¹⁴ <http://www.geforce.com/hardware/technology/4k>

1 that utilize a single pool of 4GB of VRAM (a true 4GB), the GTX 970 is incapable of
 2 outputting 4K resolution without the above mentioned performance problems, including
 3 stuttering, chopping, or distorting. Therefore, Plaintiffs and Class Members will be required
 4 to purchase a new GPU in order to meet this quickly adopting standard, despite having
 5 already being deceived by NVIDIA into believing that the GTX 970 was capable to perform
 6 flawlessly at the 4K level.

7 25. Plaintiff and Class members purchased the GTX 970 to achieve a high
 8 resolution gaming experience, which they reasonably believed was possible upon reading
 9 and relying upon on NVIDIA's misleading representations. Instead, Plaintiffs and Class
 10 members were deceived because the GTX 970 is incapable of delivering the 4K gaming
 11 experience it promised, and if it is technically capable, it is incapable of doing so without
 12 the above mentioned performance problems, including sputtering, chopping, or distorting.

13 26. In sum, Plaintiffs and Class Members were deceived by NVIDIA's
 14 misleading advertising and representations of the specifications, characteristics, qualities,
 15 and capabilities of the GTX 970, and purchased a product did not conform to the proffered
 16 representations, and have been injured by NVIDIA's unlawful conduct.

17 **PLAINTIFF FARLEY'S EXPERIENCE**

18 27. Plaintiff Farley was in the market for a new graphics card that would be
 19 capable of handling the ever increasing minimum hardware requirements that today's
 20 gaming software requires to ensure optimal performance.

21 28. One of the graphics cards that Plaintiff considered purchasing was the GTX
 22 970. In September, 2014, during his search, Plaintiff read articles¹⁵ and watched numerous
 23 product review videos on the Internet that discussed the GTX 970's specifications and
 24 repeated those found in NVIDIA's "Reviewer's Guide."

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 26
 27 ¹⁵ <http://www.guru3d.com/articles-pages/gigabyte-geforce-gtx-970-g1-gaming-review,1.html>;
 28 <http://www.tomshardware.com/news/nvidia-gtx-980-970-maxwell,27707.html>;
<http://www.techspot.com/review/885-nvidia-geforce-gtx-970-gtx-980/page2.html>
 (Each article was viewed and read by Plaintiff on its date of publication).

29. These articles, videos, and representations made on the product packaging directly influenced his purchasing decision, and in reliance on such, Plaintiff decided that the GTX 970 met his requirements.

30. On September 19, 2014, Plaintiff purchased two GIGABYTE GV-N970G1 Gaming-4GD GeForce GTX 970 4GB at a cost of \$739.98 (\$369.99 each).

31. Plaintiff purchased the GTX 970, in part because he thought it would provide a graphical experience that utilized the entire 4GB of VRAM. On January 27, 2014, Plaintiff found that he had been misled by NVIDIA when he learned from a popular website that the “usable memory for the GTX 970 is a 3.5 GB partition.”¹⁶ Plaintiff was looking forward to utilizing what he thought was the full potential of the card, which as it turns out, was never actually possible. Plaintiff was surprised to discover that even though NVIDIA advertised that the GTX 970 was capable of utilizing a single 4GB pool of VRAM at a speed of 224GB/s, possessed 64 ROP, 2048KB of L2 cache, and performing flawlessly in 4K resolution, this was not true.

32. Plaintiff now owns two GTX 970s that he must either sell at a loss or use for purposes other than those which he purchased it for.

PLAINTIFF MONTGOMERY’S EXPERIENCE

33. Plaintiff Montgomery was in the market for a new graphics card that would be capable of handling the ever increasing minimum hardware requirements that today’s gaming software requires to ensure optimal performance.

34. One of the graphics cards that Plaintiff considered purchasing was the GTX 970. In November, 2014, during his search, Plaintiff read articles¹⁷ and watched numerous product review videos on the Internet that discussed the GTX 970’s specifications and repeated those found in NVIDIA’s “Reviewer’s Guide.”

¹⁶ <http://www.guru3d.com/news-story/does-the-geforce-gtx-970-have-a-memory-allocation-bug.html>

¹⁷ http://www.overclockersclub.com/reviews/msi_gtx_970_gaming_4g/ (viewed and read by Plaintiff on approximately November 30, 2014).

1 35. These articles, videos, and representations made on the product packaging
2 directly influenced his purchasing decision, and in reliance on such, Plaintiff decided that
3 the GTX 970 met his requirements.

4 36. On December 2, 2014, Plaintiff purchased a MSI GTX 970 Gaming 4G
5 graphics card at a cost of \$349.99.

6 37. Plaintiff purchased the GTX 970, in part because he thought it would provide
7 a graphical experience that utilized the entire 4GB of VRAM. Specifically, Plaintiff
8 purchased his GTX 970 as the first step in a two step plan to upgrade his computer to be
9 capable of gaming in 4K resolution. Plaintiff planned to achieve his plan by using a process
10 called Scalable Link Interface (“SLI”). SLI is a technology that uses an algorithm of parallel
11 processing for computer graphics, which allows two or more graphics cards to be linked
12 together to produce a single output. Plaintiff anticipated that he would purchase a second
13 GTX 970 as the second step in his plan to use SLI to achieve a gaming experience in 4K
14 resolution. Yet, his plan was never achieved because on January 27, 2015 Plaintiff was
15 surprised to discover that even though NVIDIA advertised that the GTX 970 was capable of
16 utilizing a single 4GB pool of VRAM at a speed of 224GB/s, possessed 64 ROP, 2048KB of
17 L2 cache, and performing flawlessly in 4K resolution, this was not true. This newly
18 discovered information foiled Plaintiff’s plan to use SLI with a second GTX 970.

19 38. Plaintiff now owns a GTX 970 that he must either sell at a loss or use for
20 purposes other than those which he purchased it for.

21 **CLASS ACTION ALLEGATIONS**

22 39. Plaintiffs bring this class action on behalf of themselves individually and on
23 behalf of all others similarly situated as members of the following proposed national class
24 and subclass (collectively, the “Class”):

25 **National Class**

26 All persons residing in the United States who purchased a graphics or
27 video card that contains a GTX 970 GPU at retail and not solely for
28 purposes of resale or distribution since September 2014 (the “Class
Period”);

California Sub-Class

All persons residing in the California who purchased a graphics or video card that contains a GTX 970 GPU at retail and not solely for purposes of resale or distribution during the Class Period.

Excluded from the Class are:

- a. All judicial officers in the United States and their families through the third degree of relationship;
- b. Defendant and any of their officers, directors and employees and any person or entities who has already settled or otherwise compromised similar claims against the defendant;
- c. Plaintiffs' counsel, anyone working at the direction of Plaintiffs' counsel, and/or their immediate family members; and
- d. Anyone who has pending against the named defendant on the date of the Court's final certification order any individual action wherein the recovery sought is based in whole or in part on the type of claims asserted herein.

40. This action is brought and may properly be maintained as a class action pursuant to Federal Rules of Civil Procedure 23(b)(2), 23(b)(3) and (c)(4). This action satisfied the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of these rules.

41. *Numerosity* – The National Class is so numerous that the individual joinder of all members is impracticable. While the exact number of National Class members is currently unknown and can only be ascertained through appropriate discovery, Plaintiff believes that the National Class includes tens of thousands of individuals and the Georgia Sub-Class includes thousands of individuals.

42. *Commonality* – Common legal and factual questions exist and predominate over any questions affecting only individual Class members. These common questions, which do not vary among Class members and which may be determined without reference to any Class member's individual circumstances, include but are not limited to:

- a. Whether Defendant's representations of the GTX 970, as set forth above, were false, misleading, or reasonably likely to deceive customers targeted by such statements;

- b. Whether Defendant had adequate substantiation of their claims prior to making them;
- c. Whether Defendant's failure to disclose that the GTX 970 did not perform as advertised and represented was material and would be likely to mislead a reasonable consumer;
- d. Whether the GTX 970 performs as marketed and represented;
- e. Whether Defendant charged a premium price for the GTX 970 devices;
- f. Whether Defendant engaged in unfair, unlawful, and/or deceptive business practices as to the GTX 970 in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*;
- g. Whether Defendant represented, through its words or conduct, that the GTX 970 provided performance benefits that it did not actually have in violation of Cal. Bus. & Prof. Code § 17500, *et seq.*;
- h. Whether Defendant's conduct alleged herein violated public policy; and
- i. Whether Plaintiffs and the Class have been injured by the wrongs complained of herein, and if so, whether Plaintiffs and the Class are entitled to injunctive and/or other equitable relief, including restitution, disgorgement, and if so, the nature and amount of such relief.

43. *Typicality* – Plaintiffs' claims are typical of the Class members' claims. Defendant's common course of conduct caused Plaintiffs and all Class members the same harm. Likewise, Plaintiffs and other Class members can prove the same facts in order to establish the same claims.

44. *Adequacy* – Plaintiffs are adequate Class representatives because they are members of the Class they seek to represent and their interests do not irreconcilably conflict with other Class members' interests. Plaintiffs has retained counsel competent and experienced in consumer protection class actions, and Plaintiffs and their counsel intend to prosecute this action vigorously for the Class's benefit. Plaintiffs and their counsel will fairly and adequately protect the Class members' interests.

45. The Class may be properly maintained under Rule 23(b)(2). Defendant has acted or refused to act, with respect to some or all issues presented in this Complaint, on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

46. The Class can be properly maintained under Rule 23(b)(3) and (c)(4). A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual litigation of each Class member's claim is impracticable. Even if each Class member could afford to bring individual actions, the court system could not. It would be unduly burdensome for thousands of individual cases to proceed. Individual litigation also presents the potential for inconsistent or contradictory judgments, the prospect of a race to the courthouse, and the risk of an inequitable allocation of recovery among those with equally meritorious claims. Individual litigation would increase the expense and delay to all parties and the courts because it requires individual resolution of common legal and factual questions. By contrast, the class action device presents far fewer management difficulties and provides the benefit of a single adjudication, economies of scale, and comprehensive supervision by a single court.

FIRST CAUSE OF ACTION

Violation of California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, *et seq.*)

47. Plaintiffs incorporate by reference the allegations set forth above

48. NVIDIA's conduct with regard to the GTX 970 problem is an unfair and unlawful business practice in violation of California Business and Professions Code § 17200.

49. California Business and Professions Code § 17200 applies to all claims of all the Class members.

50. NVIDIA engaged in and continues to engage in acts or practices that constitute unfair competition as defined by Business and Professions Code § 17200.

UNLAWFUL PRONG OF THE UCL

51. The unlawful acts and practices of NVIDIA alleged above constitute unlawful business acts and/or practices within the meaning of California Business and Professions Code § 17200. Defendant's unlawful business acts and/or practices as alleged herein have violated numerous state, statutory and/or common laws. Among other laws,

1 Defendant has violated Business and Professions Codes § 17500, *et seq.*, as well as the
2 Lanham Act, 15 U.S.C. §1111, *et seq.*

3 52. Plaintiffs have standing to pursue these claims, and as alleged in this
4 complaint, have lost money as a result of Defendant's unlawful acts. But for Defendant's
5 misrepresentations and omissions of a material nature, Plaintiffs would not have purchased
6 the GTX 970 or would have otherwise expected to pay less.

7 **UNFAIR PRONG OF THE UCL**

8 53. Plaintiffs have standing to pursue this claim, as Plaintiffs have suffered
9 financial injury and has spent money as a result of the NVIDIA's material
10 misrepresentations and omissions. Specifically, Defendant's acts and/or practices alleged
11 herein were and are unfair within the meaning of Business and Professions Code § 17200.

12 54. The harm to California and out of state consumers outweighs the utility, if
13 any, of Defendant's acts and/or practices as alleged herein. Thus, Defendant's deceptive
14 business acts and/or practices, as alleged herein, were unfair within the meaning of the
15 Business and Professions Code § 17200.

16 55. In addition, as alleged herein, NVIDIA intended that consumers would be
17 misled and/or deceived into believing that GTX 970 was a better performing product.

18 56. At all relevant times, Defendant's misconduct and omissions alleged herein:
19 (a) caused substantial injury to the Public; (b) had no countervailing benefit to consumers or
20 to competition that could possible outweigh this substantial injury; and (c) caused damage to
21 ordinary consumers. Thus, NVIDIA's acts and/or practices as alleged herein were unfair
22 within the meaning of Business and Professions Code § 17200.

23 57. Consumers have been, and continue to be, injured by NVIDIA's sale of GTX
24 970. Class Members have suffered damage and lost money as a result of the deceptive
25 conduct as alleged herein. The unlawful and unfair business acts and practices of NVIDIA,
26 as fully described herein, present a continuing threat to the consumers to be misled and/or
27 deceived by NVIDIA as alleged herein.

1 58. Plaintiffs and the Class have been injured and have suffered loss of money or
2 property as a result of Defendant's unfair and unlawful business acts and practices.

3 59. Plaintiffs suffered injury by overpaying for GTX 970.

4 60. Plaintiffs suffered injury by paying more for GTX 970 than they would have
5 if they had known the truth.

6 61. Plaintiffs request appropriate relief to prevent Defendant from continuing its
7 unfair, deceptive, and unlawful practices with regard to GTX 970.

8 **FRAUDULENT PRONG OF THE UCL**

9 62. Plaintiffs have standing to pursue this claim, as plaintiffs have suffered
10 financial injury by way of payment of money for the product as a result of Defendant's
11 deceptive acts.

12 63. The conduct at issue was likely to, and did in fact, deceive plaintiffs and the
13 class members. By and through misrepresentations and omissions of a material nature,
14 NVIDIA acted in a deceptive manner. NVIDIA omitted to disclose the true nature of the
15 GTX 970's performance in terms of VRAM, Cache, and ROP properties.

16 64. In fact, as NVIDIA has now admitted, the GTX 970 performs less than
17 represented.

18 65. Plaintiffs request appropriate relief, including injunctive relief, as well as
19 restitution and/or disgorgement of all funds and profits made by the defendant by this
20 scheme.

21 **SECOND CAUSE OF ACTION**

22 **Violation of California False Advertising Law "FAL"**
23 **(Cal. Bus. & Prof. Code § 17500, *et seq.*)**

24 66. Plaintiffs incorporate by reference all facts alleged above.

25 67. Plaintiffs bring this on behalf of themselves and on behalf of the Class.

26 68. Defendant is a California based company disseminating advertising from
27 California throughout the United States.
28

1 69. NVIDIA engaged in a systematic campaign of advertising and marketing the
2 GTX 970. In connection with the sale and the promotion of GTX 970, Defendant
3 disseminated or caused to be disseminated false, misleading, and deceptive advertising
4 regarding the abilities to the general public through various forms of media, including but
5 not limited to product packaging, product displays, labeling, advertising and marketing.
6 However, NVIDIA knew or reasonably should have known that the GTX 970 does not
7 make available to users the advertised capabilities, and that the failure to disclose these facts
8 was a material omission.

9 70. When NVIDIA disseminated the advertising described herein, it knew, or by
10 the exercise of reasonable care should have known, that the statements concerning GTX 970
11 were untrue or misleading, or omitted to state the truth about the GTX 970, in violation of
12 the False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*

13 71. As a proximate result of NVIDIA's conduct, Plaintiffs and members of the
14 Class were exposed to these misrepresentations, omissions and partial disclosures,
15 purchased the GTX 970 in reliance on these misrepresentations, omissions and partial
16 disclosures, and suffered monetary loss as a result.

17 72. NVIDIA made such misrepresentations despite the fact that it knew or should
18 have known that the statements were false, misleading, and/or deceptive.

19 73. There were reasonably available alternatives to further Defendant's legitimate
20 business interests, other than the conduct described herein.

21 74. Pursuant to Business and Professions Code §§ 17203 and 17535, Plaintiffs
22 and the members of the Class seek an order of this Court enjoining Defendant from
23 continuing to engage, use, or employ the above-described practices in advertising the sale of
24 the GTX 970. Plaintiffs seek an order requiring Defendant to make full corrective
25 disclosures to correct its prior misrepresentations, omissions, failures to disclose, and partial
26 disclosures.

27 75. On information and belief, Defendant has failed and refused, and in the
28 future will fail and refuse, to cease its deceptive advertising practices, and will continue to

1 do those acts unless this Court orders Defendant to cease and desist pursuant to California
2 Business and Professions Code § 17535.

3 76. Plaintiff, individually and on behalf of the Class, seeks restitution,
4 disgorgement, injunctive relief, and all other relief allowable under § 17500, *et seq.*

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiffs, on behalf of themselves and all others similarly situated
7 in the Class, prays the Court enter judgment against NVIDIA as follows:

- 8 a. An Order certifying the proposed Class under Rule 23 of the Federal Rules of
9 Civil Procedure and appointing Plaintiffs and their Counsel to represent the
10 Class;
- 11 b. An Order awarding declaratory and injunctive relief as permitted by law or
12 equity, including enjoining Defendant from continuing their unlawful
13 practices as set forth herein;
- 14 c. Declare that the actions of Defendants, as set out above, violate California
15 Law. To wit, Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et*
16 *seq.*;
- 17 d. Order Defendant to pay Plaintiffs and other Class and Subclass members an
18 amount of actual, statutory, and punitive damages, and restitution in an
19 amount to be determined at trial, and where allowed by law;
- 20 e. Award Plaintiffs and the Class:
 - 21 i. their reasonable litigation expenses and attorneys' fees;
 - 22 ii. pre- and post-judgment interest, to the extent allowable;
 - 23 iii. restitution, disgorgement and/or other equitable relief as the Court
24 deems proper;
 - 25 iv. permanent injunction prohibiting NVIDIA from engaging in the
26 conduct and practices complained of herein;
 - 27 v. statutory damages under 18 U.S.C. § 2520;
 - 28 vi. punitive damages as allowed by law; and
- f. Grant such other relief as may be just and proper.

1 Dated: April 21, 2015

AUDET & PARTNERS, LLP,

2 /s/ William M. Audet

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27 *Attorneys for Plaintiff*

28 **JURY TRIAL DEMAND**

The Plaintiffs hereby demand a trial by jury of all issues so triable.

22 Dated: April 21, 2015

23 /s/ William M. Audet

24 By: William M. Audet

EXHIBIT A

GIGABYTE™



UPC

EAN 4 719331 336158

Model Name:

GV-N970GI GAMING-4GD

NVIDIA GTX 970/REV 1.0

PCI-E 3.0/4GB GDDR5/256 bit

Dual-Link DVI-D/DVI-D

HDMI/DisplayPort*3

SN143741057162

Check Number:
9488

GEFORCE® GTX 970

4GB GDDR5

EXHIBIT B



Power
cable



DVI to VGA/
D-sub adapter